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OFFICE OF PETITIONS

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Apple Valley CA 92307

In re Patent No. 6,381,787
Issued: May 7, 2002
Application No.: 09/500,736
Filing Date: February 9, 2000
Attorney Docket No.

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: REQUEST FOR INFORMATION
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This is a request for information in response to the petition under 37 CFR 1.378(b), filed October 5, 2011.

Petitioner is allowed a non-extendable period for reply of **TWO (2) MONTHS** from the mailing date of this communication to provide a response. The response should be titled, "Response to Request for Information." If no response is provided within the period set forth, a decision will be made solely on the merits as set forth in the petitions under 37 CFR 1.378(b) filed July 11, 2011 and August 26, 2011. No additional fees are due.

The patent issued May 7, 2002. The 3.5 year maintenance fee could have been paid from May 7, 2005, through November 7, 2005, or with a surcharge, as authorized by 37 CFR 1.20(h), during the period from November 8, 2005, to May 7, 2006. Petitioner did not do so. Accordingly, the patent expired at midnight on April 3, 2005. It is noted that the period for paying the 7.5-year maintenance fee has also passed.

Petitioner is required to address the following points:

- It is noted that petitioner states that Mrs. Rogone was responsible for tracking and paying the maintenance fee for the subject patent, including maintaining the master docket calendar on which maintenance fee due dates were entered. Petitioner asserts that, as a result of many hardships that befell Mrs. Rogone and her employees, the master docket calendar on which the maintenance fee due dates were docketed was forgotten about and later found in the files and papers of Mr. Crouteau. Section 711.03(c)(2) of the Manual of Patent Examining Procedure, provides, in pertinent part that:

In addition, decisions on revival are made on a "case-by-case basis, taking all the facts and circumstances into account." *Smith v. Mossinghoff*, 671 F.2d 533, 538, 213 USPQ 977, 982 (D.C. Cir. 1982). Finally, a petition cannot be granted where a petitioner has failed to meet his or her burden of establishing that the delay was "unavoidable." *Haines v. Quigg*, 673 F. Supp. 314, 316-17, 5 USPQ2d 1130, 1131-32 (N.D. Ind. 1987).

A delay resulting from an error (e.g., a docketing error) on the part of an employee in the performance of a clerical function may provide the basis for a showing of "unavoidable" delay, provided it is shown that:

- (A) the error was the cause of the delay at issue;
- (B) there was in place a business routine for performing the clerical function that could reasonably be relied upon to avoid errors in its performance; and
- (C) the employee was sufficiently trained and experienced with regard to the function and routine for its performance that reliance upon such employee represented the exercise of due care.

A delay resulting from an error, such a docketing error, on the part of an employee in the performance of a clerical function may provide the basis for a showing of unavoidable delay. Such a showing should identify the specific error (which petitioner states is the failure to consult with the master docket calendar), the individual who made the error, and the business routine in place for performing the action which resulted in the error. The showing must establish that the individual who erred was sufficiently trained and experienced with regard to the function and routine for its performance that reliance upon such employee represented the exercise of due care. The showing should include information regarding the training provided to the personnel responsible for the docketing error, degree of supervision of their work, examples of other work functions carried out, and checks on the described work which were used to assure proper execution of assigned task.

- Petitioner is required to succinctly state the circumstances that may have affected Mrs. Rogone from the date the maintenance fee payment window opened, i.e., November 8, 2005, until July 2011, that may have prevented Mrs. Rogone from looking into the status of the patent and/or consulting with the master docket calendar to discover the maintenance fee was coming due. As petitioner states that Mrs. Rogone was chiefly responsible for tracking and paying the maintenance fees and maintaining the master docket calendar, this inquiry is directed to Mrs. Rogone only and not meant to solicit any other circumstances relating to Mr. Crouteau or other employees.

Further correspondence with respect to this matter should be addressed as follows:

By mail: Commissioner for Patent
Mail Stop Petitions
Box 1450
Alexandria, VA 22313-1460

By facsimile: (571) 273-8300
Attn: Office of Petitions

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3222.

/Kenya A. McLaughlin/

Kenya A. McLaughlin
Petition Attorney
Office of Petitions